United Nations S/2002/678

Security Council

Distr.: General
19 June 2002

Original: English

Letter dated 17 June 2002 from the Secretary-General addressed to the President of the Security Council

I am attaching for your consideration and for the consideration of the members of the Security Council a letter, dated 10 June 2002, from the President of the International Tribunal for the Former Yugoslavia, Judge Claude Jorda (see annex).

Attached to President Jorda's letter is a report that has been jointly prepared by the President, the Prosecutor and the Registrar of the International Tribunal and that has been considered and approved by its judges (see enclosure).

In the report, the International Tribunal outlines certain measures that it believes that it must take if it is to be in a position to achieve the objective of completing all trial activities at first instance by 2008.

The first measure is to concentrate on the prosecution and trial of the highest-ranking political, military and paramilitary leaders who are suspected of being responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.

The second measure, which is complementary to the first, is to transfer cases involving mid-level accused, that is, accused who, while they were not the principal political, military and paramilitary leaders, are nevertheless alleged to have exercised a measure of leadership or control, to national courts for prosecution and trial.

It is envisaged that the cases against several accused who are currently detained under the authority of the International Tribunal might possibly be transferred to national courts for prosecution and trial in this way, as well as cases involving some further 50 individuals against whom the Prosecutor anticipates submitting indictments by the time she has completed the investigatory part of her mandate, in 2004.

In view of the location where the crimes concerned are alleged to have been committed, all of these cases would be referred for prosecution and trial to the national courts of Bosnia and Herzegovina.

However, the Tribunal emphasizes that it would be in a position to refer cases to a State for prosecution and trial only if it were known that its courts would be able to handle those cases effectively and consistently with internationally recognized standards of human rights and due process.

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The Tribunal notes that, according to information at its disposal, the judicial systems in Bosnia and Herzegovina exhibit a number of serious shortcomings in these respects. The Tribunal is consequently of the view that it would not be possible for it to refer cases to the national jurisdictions of that State as they are currently organized and function.

At the same time, the Tribunal considers that the newly established State Court of Bosnia and Herzegovina has the potential to be an appropriate forum to which it might refer cases for prosecution and trial.

To that end, the Tribunal recommends that a division be created within the State Court with specific responsibility for the conduct of cases involving serious violations of international humanitarian law in Bosnia and Herzegovina. It further recommends that, at least for an initial period, this division should be composed of both international and national judges. The Tribunal also outlines certain measures that would need to be adopted within the Bosnian legal system, as well as certain practical arrangements that would need to be put in place, before any transfers of cases could occur.

If these recommendations were implemented and these measures and arrangements put in place, the Tribunal considers that it would then be in a position to transfer cases against mid-level accused to the State Court of Bosnia and Herzegovina for prosecution and trial.

The Tribunal seeks the endorsement of the Security Council for this broad programme of action.

Should the Security Council confer such endorsement, the Tribunal would then proceed to adopt the necessary amendments to its Rules of Procedure and Evidence.

Transfers of cases to the State Court of Bosnia and Herzegovina would commence once it had been verified that all necessary corresponding measures had been adopted within the Bosnian legal system and all necessary practical arrangements put in place.

I would be grateful if you would bring the present letter and its attachments to the attention of the members of the Security Council.

(*Signed*) Kofi A. **Annan**

Annex*

Letter dated 10 June 2002 from the President of the International Criminal and Tribunal for the former Yugoslavia addressed to the Secretary General

[Original: English and French]

Following the letter which Mrs. Del Ponte, the Registrar and I addressed to you on 13 February 2002, I have the honour of sending you our report on the judicial status of the International Criminal Tribunal for the Former Yugoslavia and the prospects for referring certain cases to national courts.

The main purpose of the report is to provide you with a general overview of the status of the International Tribunal and to present you and the members of the Security Council with avenues of thought regarding the reforms to be undertaken for the implementation of a referral process.

I would appreciate your transmitting this document to the members of the Security Council.

Moreover, I wish to inform you that I am sending a copy of the report today to Mr. Paddy Ashdown, High Representative for Bosnia and Herzegovina.

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* Reproduced in the languages submitted (English and French).

I also wish to inform you that the Prosecutor and I will be in Bosnia and Herzegovina from 17 to 21 June 2002 where we will be meeting with the political and judicial authorities of the country as well as the representatives of the international community. This visit should allow us to gather additional information on the functioning of the judicial system in Bosnia and Herzegovina and the possible difficulties encountered there in respect of punishment for war crimes and crimes against humanity. We will send you a report of our trip when we return.

I remain available to you for any additional information on these matters.

(*Signed*) Claude Jorda

Enclosure*

REPORT ON THE JUDICIAL STATUS OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND THE PROSPECTS FOR REFERRING CERTAIN CASES TO NATIONAL COURTS

June 2002

* Reproduced in the languages submitted (English and French).

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Section 1. Obstacles to setting the referral process in motion

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INTRODUCTION

1. Paradoxically, at the moment when the judicial activity of the International Criminal Tribunal for the Former Yugoslavia (the "Tribunal") is at its highest point the need to refer some cases to national courts is most keenly felt. In fact, the Tribunal is operating at full capacity and, as it undertook before the United Nations Security Council (the "Security Council"), is successfully seeing through all the reforms necessary to complete investigations by 2004 and the first instance trials by 2008. At the same time, it is contemplating more than ever having some accused tried by national courts.

2. This situation is due to the conjunction of two factors: the gradual restoration of democratic institutions in the countries of the former Yugoslavia and the increase in the number of arrests of high-ranking political and military figures. At the outset, referring cases to the courts in the States of the former Yugoslavia was admittedly inconceivable because some of them were still at war. Today however, with the return to peace, fragile as it may be, and the reforms of the judicial systems undertaken with the assistance of the international community, the implementation of a referral process of certain cases is an increasingly likely prospect. Moreover, the recent arrests of many military leaders and high-ranking government officials allow the Tribunal to direct its action in a manner more in line with the spirit of the mission it received from the Security Council, that is to give priority to the prosecution of the most serious crimes which directly threaten international peace and security.

3. It was in this new context, which marks a turning point in its history, that the Tribunal decided to present a programme of action setting out how its three organs, the Chambers, the Office of the Prosecutor and the Registry, would co-ordinate to move towards winding down its mission.

4. This programme is consonant with the one presented by the President and Prosecutor to the Security Council in November 2001. The programme proposes, firstly, that the Tribunal's mission be focussed more on the prosecution of those crimes most prejudicial to international public order and, secondly, that some of the cases be referred, under certain conditions, to national courts. The Prosecutor and the President also emphasised the need to ensure first of all that the national courts have the necessary resources for taking on such cases and, in particular, that they operate fairly and with respect for the principles of international humanitarian law and the protection of human rights.

5. This programme of action complements the reforms undertaken two years ago, in particular, the one known as the "*ad litem* Judges" reform[1], conceived principally to allow the Tribunal to hear the cases before it within a reasonable time-limit and complete its first instance proceedings by 2008.

6. This report is the product of joint effort by the President, Prosecutor and Registrar. In January 2002, they created a working group whose mission was to examine the problems

[1] We recall that in January 2000, the Tribunal undertook wide-scale reforms to expedite the resolution of the cases before it and thus conclude its mission by 2008. After an in-depth review of the structure and operation of the Tribunal *(cf. report of May 2000)*, the Judges proposed to the Security Council to amend the Statute in order to provide for the appointment of *ad litem* Judges who would serve with permanent Judges in specific cases. On 30 November 2000, the Security Council approved the Judges' proposals and, for the second time since the establishment of the Tribunal, amended the Statute accordingly (*cf.* Security Council resolution 1329 of 30 November 2000 (S/RES/1329 (2000)). Several important amendments were made to the Rules of Procedure and Evidence in order to expedite the proceedings and make the reforms of the Statute fully effective.

which might arise through the implementation of the process of referring certain cases. In February 2002, they addressed a joint letter to the United Nations Secretary-General (the "Secretary-General") informing him of this initiative. In March and April 2002, the President, Prosecutor and Registrar met with members of the Office of the High Representative for Bosnia and Herzegovina (the "High Representative") responsible for reforming the judicial system of that State, and with them drew up a plan of action taking into account all their priorities. At an extraordinary plenary session on 23 April 2002 the President, Prosecutor and Registrar presented the contents of the report to the Judges of the Tribunal, who agreed with the major directions set out.

7. Part II of the report deals chiefly with the possibility of referring cases to the courts of Bosnia and Herzegovina since, according to the Prosecutor, as matters now stand some of the Tribunal's cases could be referred to its courts. Moreover, with the help of the international community, Bosnia and Herzegovina should soon be undertaking reforms which could lead to the establishment of a court with special jurisdiction over war crimes. If there were to be a change in the Prosecutor's penal policy, the Tribunal could also consider referring some cases to other countries of the former Yugoslavia.

8. This report does not claim to resolve all the problems arising from the implementation of the Tribunal's completion strategy and, in particular, the referral of certain cases to the national courts. Its main purpose is to provide the Secretary-General, the members of the Security Council, the High Representative and the national authorities concerned with *avenues of thought* which will make it possible for them to ascertain the appropriate measures for the Tribunal to be able to combat even more effectively the impunity of the major war criminals and deliver justice fully to the victims.

* * *

9. Two main areas form the basis for this report: 1) a statistical evaluation of the activity of the Office of the Prosecutor and the Chambers to determine the scope of the referral process to be undertaken; 2) a presentation of the main obstacles to the referral of cases to the national courts of Bosnia and Herzegovina and the reforms which must be implemented in order to overcome them.

PART I. DESPITE AN INCREASE IN THE TRIBUNAL'S ACTIVITY, IT CANNOT TRY ALL THE ACCUSED ON ITS OWN AND SHOULD REFER CERTAIN CASES TO NATIONAL COURTS

10. The activity of the Office of the Prosecutor and the Chambers has increased since the adoption of the reforms initiated in January 2000 which came into effect in July 2001 (Chapter 1). However, the Tribunal cannot try all the persons accused of war crimes and crimes against humanity on its own. It must concentrate on the main political and military figures and refer certain cases to the national courts, if necessary with the help of truth and reconciliation commissions[2], provided however that those courts satisfy the requirements of international justice (Chapter 2).

Chapter 1. Increase in the Tribunal's activity

Section 1. Office of the Prosecutor

11. As the Prosecutor stated to the Security Council on 27 November 2001, she has, since the beginning, directed her penal policy towards the prosecution of the most senior political and military figures, leaving the responsibility of trying the subordinates to the national courts. In keeping with the directions she has set, she should complete her investigations by 2004.

12. Moreover, the Prosecutor is increasing her investigative and prosecutorial activity, as demonstrated by the following statistics:

Number of indictments issued: Number of accused:	40 124
Number of indictments at the pre-trial stage: Number of accused at the pre-trial stage:	13 18
Number of indictments at trial stage: Number of accused at trial stage:	9 (3 of which relate to the Milo{evi} case) 12
Number of indictments at appeal stage: Number of accused at appeal stage:	6 15
Number of new investigations to be closed by 2004: Possible number of new indictments by 2004: Possible number of additional accused by 2004:	25 33 100

13. These statistics call for two comments.

[2] On 12 May 2001, at a conference on the establishment of a truth and reconciliation commission in Bosnia and Herzegovina, the President stated that "[s]ince they are not a priority for the International Tribunal, those who physically carried out the crimes should, in my opinion, be encouraged to participate voluntarily in the work of the truth and reconciliation commission and, should it prove necessary, admit to their crimes before it. Confessions of this sort have an important symbolic value and promote national reconciliation. They constitute the unequivocal proof of the fact that mass crimes were committed and represent a form of recognition of the victims' pain. [...] [I]n order to encourage the [intermediary-level criminals and subordinates] to participate in the process of national reconciliation, it might prove necessary to allow the commission to make recommendations to local prosecutors and, in some cases, even to the Prosecutor of the International Tribunal as to what should be done about the prosecution of persons who have confessed all their crimes before it. While it appears unlikely that such recommendations would convince the Prosecutor to withdraw an indictment against a high-level accused, nevertheless they may be considered as mitigating circumstances for sentencing purposes".

14. Firstly, it will be possible to complete the investigations by 2004 only if the States cooperate in handing over evidence, if the Prosecutor is allocated sufficient resources to conduct her investigations and if no new conflict or hostilities falling within the jurisdiction of the Tribunal break out in the former Yugoslavia.

15. Secondly, the completion date for the trials cannot be established with certainty in respect of either current or future indictments. This date depends on factors beyond the control of the Chambers and the Office of the Prosecutor:

- organisation of the trials: the number of trials stemming from each indictment depends on how the arrests take place. If all the accused in one indictment are arrested before the trial commences, it will be possible to hold one trial for each indictment. However, if all the accused are not arrested within a reasonable time-limit, several trials, or two at least, will have to be organised for one indictment and the proceedings will inevitably be delayed[3];

- guilty pleas: it is impossible to predict the number of trials which will be shortened by a guilty plea;

- defence strategy: the length of the trials also depends on the strategy of defence counsel;

- arrests: the length of the trials depends ultimately on the pace of the arrests. If regular arrests are not carried out by the States of the international community, in particular those of the former Yugoslavia, it will clearly not be possible to complete the trials at the Tribunal by the date anticipated. In this respect, it should be recalled that 25 accused currently remain at large.

16. The Prosecutor believes that 25 new investigations should be completed and 33 new indictments issued by 2004. This would mean 100 additional accused.

17. Anxious to respect her commitment to direct her penal policy towards the prosecution of the highest ranking political and military figures, the Prosecutor considers that 10 of those 25 new investigations may be referred to national courts, as matters stand today exclusively to the courts of Bosnia and Herzegovina. These investigations correspond to 17 indictments for 50 possible intermediary-level accused[4]. Therefore without counting the ongoing cases or the indictments already issued, the Tribunal would have to deal with only 16 new indictments involving approximately 50 individuals. Furthermore, assuming that all these persons are indicted and transferred to the Tribunal, only 16 new trials would have to be organised.

18. These figures make keeping to the time-limits set out appear reasonable. Nonetheless, significant advances may still be made with a view to further accelerating the proceedings. This includes changes to the disclosure procedure and more frequent use of judicial notice. Moreover, bolstering the internal structure of the Office of the Prosecutor should increase the effectiveness of its work and this is already taking place.

Section 2. Chambers and Registry

19. The activity of the Chambers and the Registry has been marked by the implementation of the structural and operational reforms of the Tribunal which, as we stated, were initiated in January 2000 and resulted, *inter alia*, in the appointment of *ad litem* Judges who serve with

[3] This situation may give rise to contradictions between the judgements.
[4] *Cf.* para. 31.

permanent Judges in specific cases. Most of the solutions advocated as part of these reforms have come into effect. Many new provisions have thus been incorporated into the Rules of Procedure and Evidence (the "Rules") to expedite proceedings, in particular regarding the power of the Judges at the pre-trial and trial stages. A Co-ordination Council and a Management Committee were created to ensure better co-operation between the Office of the Prosecutor, Chambers and Registry and more effective management of the Tribunal's resources. Reforms to improve the operation of the Appeals Chambers of the Tribunal for the former Yugoslavia and the Tribunal for Rwanda have also been launched. Generally speaking, the purpose of the reforms is to equip the Appeals Chambers with all the necessary tools to deal with their increased workload and to ensure greater uniformity in the case-law of the two Tribunals. Lastly, an international bar is soon to be established at The Hague. This bar will provide defence counsel with an organisation which guarantees respect for their independence and professional ethics, while enabling them to hone their knowledge of international humanitarian law, which should improve the quality and effectiveness of international criminal justice.

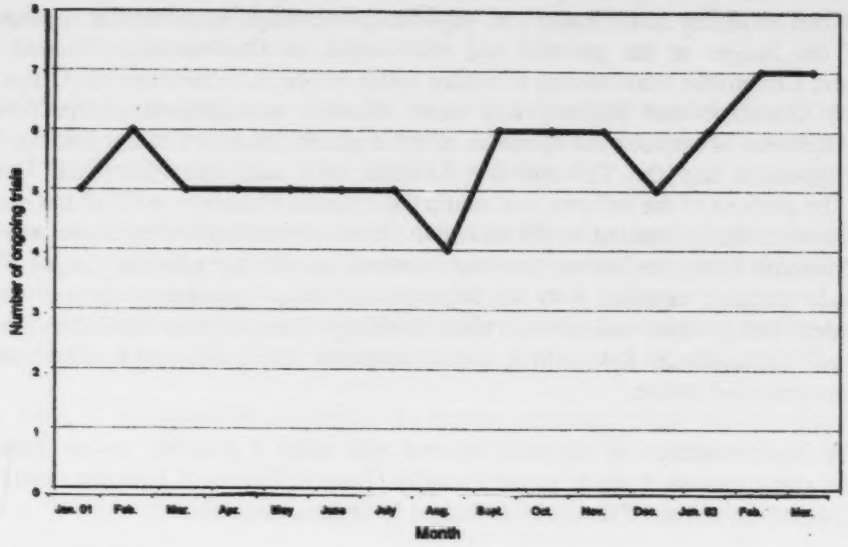
20. The implementation of all these reforms will make it possible for the Tribunal to respect the commitments it made to the Security Council, that is to hold six simultaneous trials daily as of the arrival of the *ad litem* Judges in September 2001[5].

21. However the Chamber's activity cannot be reduced to the number of first instance trials. The considerable increase in the number of cases at the pre-trial stage (graph no. 2) and in the number of appeals (graph no. 3) should also be considered.

22. The consequence of this heightened activity is an unprecedented increase in the number of judicial decisions rendered during the period under consideration (graph no. 4).

[5] Including hearings and drafting of judgements.

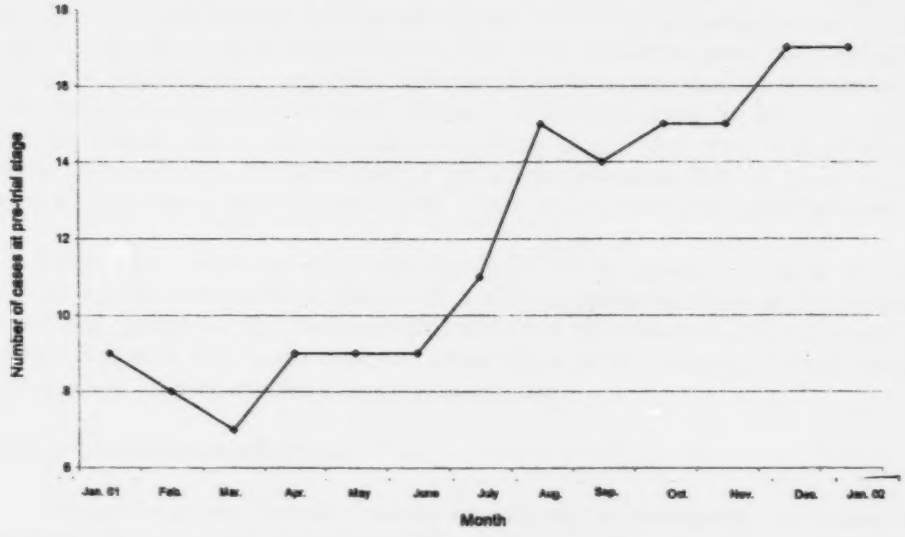
- Graph n° 1 : number of ongoing trials



Observations:

23. This graph shows the increase in the number of first instance trials following the appointment of the *ad litem* Judges. The Tribunal is now holding six or even seven simultaneous trials daily whereas in previous years it held only four. These figures take into account judgements currently being drafted.

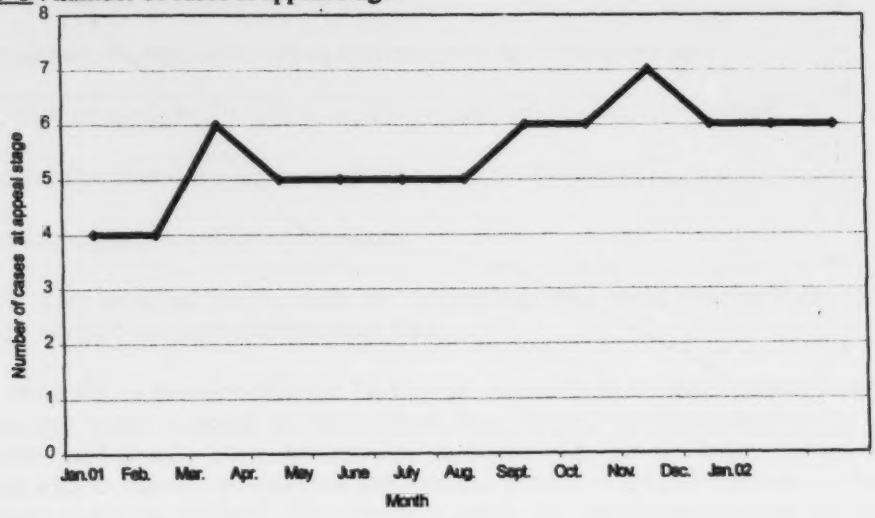
- Graph n° 2 : number of cases at the pre-trial stage



Observations:

24. In addition to the cases at the pre-trial stage, this graph includes those for which the pre-trial stage has been completed, that is those which can now go to trial. In January 2002, of a total of 14 cases, 13 were at the pre-trial stage and 1 ready for trial.

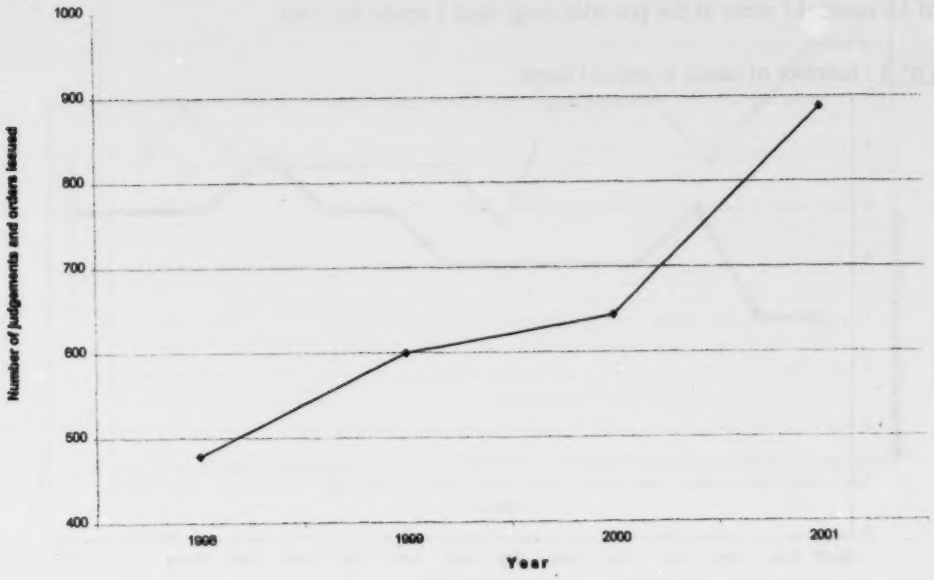
- Graph n° 3 : number of cases at appeal stage



Observations:

25. Each of the six appeals on the merits in January 2002 corresponds to an indictment. They represent 15 accused in all. Eight interlocutory appeals and two requests for review do not appear in this table.

- Graph n° 4 : number of judgements and orders issued as of 31 December 2001



Observations:

26. This graph illustrates the increase in the overall judicial activity of the Tribunal. The number of judgements and orders issued almost doubled between 1998 and 2001.

27. These graphs clearly indicate an increase in the activity of the Trial and Appeals Chambers. The President and Registrar consider that some measures must still be taken to further enhance the Tribunal's effectiveness. The objective set out in the report of May 2000 on the operation of the Tribunal[6], that is to reduce the average length of trials to 12 or even 6 months, has not yet been achieved.

28. To do so, we should *inter alia*:

- take measures to expedite the pre-trial stage of cases so that three cases are always ready for trial which would mean that any interruption in an ongoing trial could be compensated for;

- promote the joinder of related cases which depends on the pace of the arrests[7];

- increase the use of written evidence by better use of the procedures provided for under Rules 71 ("Depositions"), 92 *bis* ("Proof of Facts other than by Oral Evidence") and 94 ("Judicial Notice") of the Rules;

[6] *Cf.* footnote 1.

[7] Since December 2001, by deciding to join several cases, the Judges have avoided having to organise four trials which would have prolonged the proceedings considerably.

- limit the number of witnesses testifying to a number representative of all the crimes in the indictment, which does not surpass a certain percentage of the total number of municipalities in which the crimes allegedly took place[8];

- ensure that the average stay of the witnesses at The Hague is not more than five days rather than the current 10;

- ensure that the average testimony of a witness does not exceed one day;

- ensure that the number of witnesses called by each party remains reasonable[9];

- ensure that the courtrooms are occupied on a more constant basis[10].

- reduce the length of appellate proceedings;

29. It must be noted that to make the proceedings even more efficient these measures should be adopted and applied at the same time.

30. However, as the President told the General Assembly in November 2001, it should be observed that "every aspect of the proceedings, from the pre-trial management to the appeals judgement, has already been substantially improved and can no longer be appreciably amended without calling into question the principal features of the international criminal trial established under the Statute". The Judges, together with the Prosecutor and the Defence, must therefore take all the measures necessary to implement concretely the reforms already set in place.

Chapter 2. Referral Process

Section 1. Basis for the referral process

31. Bearing the above in mind, several persons currently detained by the Tribunal, as well as a possible 50 or so future accused might be referred to national courts. They are mainly accused in intermediary-level positions between the principal military and political leaders indicted and tried by the Tribunal and the low-ranking subordinates indicted and tried by the national courts. Let us not forget that the Rome Agreement of 18 February 1996 (the "Agreement") already provides a procedure under which the courts of Bosnia and Herzegovina to prosecute and try these people under certain conditions. Under the terms of the Agreement, local prosecutors may prosecute persons charged with war crimes in their courts if they have received the Prosecutor's authorisation to do so granted after she duly examines the case-files supplied to her and the evidence contained therein. To date, the Prosecutor of the Tribunal has received 1,266 files concerning 4,045 suspects from the local authorities and examined approximately 700 files concerning about 2,500 suspects.

32. Therefore "intermediary-level accused" means all those who, though in a sufficiently high-level position of authority to be indicted by the Prosecutor of the Tribunal[11], may be

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[8] *Cf.* Judge Robinson's internal memorandum to all the Judges of the Tribunal dated 10 April 2002.

[9] *Ibid.*

[10] The Judges devote a considerable part of their time not only to participating in hearings but also to drafting decisions and judgements. Moreover, the many procedural issues raised by the parties, difficulties linked to the fact that victims and witnesses are far away and the translation of documents inevitably delay the trials.

tried by national courts provided certain conditions have been satisfied. Most important among such conditions is the ability of the national courts fully to conform to internationally recognised standards of human rights and due process in the trials of referred persons.

33. It should be recalled that the Secretary-General was already encouraging the national courts to participate in the trial of war criminals in his report of 3 May 1993, annexed to the Statute. He stated that: "[...] it was not the intention of the Security Council to preclude or prevent the exercise of jurisdiction by national courts with respect to [serious violations of international humanitarian law]. Indeed national courts should be encouraged to exercise their jurisdiction in accordance with their relevant national laws and procedures"[12].

34. Similar encouragement appeared in the Preamble of the Rome Statute of the International Criminal Court which reads: "[r]ecalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and "[a]ffirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation"[13].

Section 2. Implementation of the referral process

35. The implementation of the referral process might require amendments to the Statute and a reformulation of Rule 11 *bis* of the Rules[14]. It might also require the signing of a co-operation agreement between the Tribunal and the national authorities concerned.

36. Article 1 of the Statute theoretically allows the Tribunal to try all serious violations of international humanitarian law, whatever the level of responsibility of the perpetrators, that is both the highest State authorities and the intermediary-level criminals and subordinates. Of course this has not prevented the Prosecutor from directing her action towards the prosecution of the main political and military figures and leaving the responsibility of trying the subordinates to the national courts. However now when we might be seeing the formal implementation of the process of referring cases involving intermediary-level accused it should perhaps be specified that the distribution of cases between the Tribunal and the national courts must be carried out so that the Tribunal has priority in cases involving high-ranking civilian, political and military leaders and so that the national courts will judge the

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[11] Accordingly, the acts ascribed to them will be enumerated in an indictment issued by the Prosecutor and confirmed by a Judge of the Tribunal.

[12] Report of the Secretary-General established pursuant to paragraph 2 of Security Council resolution 808 (1993), 3 May 1993, S/25704, para. 64.

[13] Rome Statute of the International Criminal Court adopted on 17 july 1998.

[14] Rule 11 *bis* states that : "(A) Where, on application by the Prosecutor or *proprio motu*, it appears to the Trial Chamber that (i) the authorities of the State in which an accused was arrested are prepared to prosecute the accused in their own courts; and (ii) it is appropriate in the circumstances for the courts of that State to exercise jurisdiction over the accused, the Trial Chamber, after affording the opportunity to an accused already in the custody of the Tribunal to be heard, may order that the indictment against the accused be suspended, pending the proceedings before the national courts. (B) If an order is made under this Rule: (i) the accused, if in the custody of the Tribunal, shall be transferred to the authorities of the State concerned; (ii) the Prosecutor may transmit to the authorities of the State concerned such information relating to the case as the Prosecutor considers appropriate; (iii) the Prosecutor may direct trial observers to monitor proceedings before the national courts on the Prosecutor's behalf. (C) At any time after the making of an order under this Rule and before the accused is convicted or acquitted by a national court, the Trial Chamber may, upon the Prosecutor's application and after affording an opportunity to the authorities of the State concerned to be heard, rescind the order and issue a formal request for deferral under Rule 10. (D) If an order under this Rule is rescinded by the Trial Chamber, the Trial Chamber may formally request the State concerned to transfer the accused to the seat of the Tribunal, and the State shall comply without undue delay in accordance with Article 29 of the Statute. The Trial Chamber or a Judge may also issue a warrant for the arrest of the accused".

other violations[15]. In this respect, it should be stated that in resolution 1329, the Security Council took "note of the position expressed by the International Tribunals that civilian, military and paramilitary leaders should be tried before them in preference to minor actors"[16].

37. Moreover, at the extraordinary plenary session of 23 April 2002, the Judges noted that the Statute contained some ambiguities as to the extent of the Tribunal's power to refer cases to the national courts. They suggested that the Security Council resolve the issue preferably by passing a resolution amending the Statute. It cannot be said for certain that the provisions of Article 29 of the Statute which impose on all the member States a general obligation to co-operate with the Tribunal may be interpreted as allowing the Tribunal to compel the national courts to try the persons referred, whilst respecting the indictments issued by the Prosecutor. Nor is it certain that the provisions of Article 9 of the Statute[17] which establish the principles of concurrent jurisdiction and the primacy of the Tribunal may be interpreted as authorising the Tribunal to implement a more far-reaching referral process than the one currently set out in the Rules. The current version of Rule 11 *bis* of the Rules makes it possible only to suspend an indictment, under limited conditions, in the case of proceedings before the national courts. However, to implement a truly effective referral process, the scope of the application of this Rule must be broadened. This means:

- Allowing certain cases to be referred to the courts of the State on whose territory the crimes were committed.

38. The current version of Rule 11 *bis* of the Rules provides that only the State in which the accused was arrested has jurisdiction. As such, in accordance with the criteria pertaining to the jurisdiction of criminal courts recognised in legal systems throughout the world, the Tribunal should be authorised to refer a case not only to the courts of the State in which the accused was arrested but also to those of the State in which he perpetrated his crimes.

- Authorising the referral of cases involving accused not in the custody of the Tribunal.

39. Rule 11 *bis* of the Rules, as it stands, provides only for the possibility of referring cases involving accused already in the custody of the Tribunal. However, the Tribunal should also be authorised to refer the indictments concerning accused, even if they are not being detained at The Hague, to the national prosecutors or the examining judges. This accused would therefore not be pointlessly transferred to the Tribunal before being returned to the former Yugoslavia, which would avoid considerable delays in the trial proceedings and circumvent sensitive political and diplomatic problems. It may be necessary to amend the Statute in order to provide the necessary authority for the Prosecutor to implement such policy.

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[15] It should be recalled that Article 1 of the Charter of the Nuremberg International Military Tribunal explicitly provided that it was competent to effectuate the "just and prompt trial and punishment of the major war criminals of the European Axis".

[16] Security Council resolution 1329 of 30 November 2000, S/Res/1329 (2000).

[17] We should recall that Article 9 of the Statute entitled "Concurrent Jurisdiction" reads as follows: "1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. 2. The International Tribunal shall have primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal."

- Making it possible for the Tribunal to ensure that the accused to be tried by national courts will have to answer for all the crimes specified in the indictments.

40. Rule 11 *bis* of the Rules presently sets out that when a case is referred the indictment issued by the Tribunal must be suspended pending the initiation of proceedings before the national courts. This wording leaves too much latitude to the national courts which would not be bound to respect the indictment. In order to obviate any risk of impunity, the Tribunal should be in a position to ensure that the accused answer for all the crimes ascribed to them by the Prosecutor, as characterised and confirmed in the Tribunal's indictment. It should be noted that Rule 11 *bis* (c) of the Rules already provides the Tribunal with the possibility of requesting the deferral of a case, in particular when, pursuant to Rules 9 and 10 of the Rules, an "act being investigated or which is the subject of those proceedings is characterised as an ordinary crime" or "there is a lack of impartiality or independence, or the investigations or proceedings are designed to shield the accused from international criminal responsibility, or the case is not diligently prosecuted".

- Enabling the Tribunal to compel the national judicial authorities to respect the protective measures ordered for victims and witnesses.

41. It is possible that some of the victims and witnesses' statements in the files to be transmitted to the national judicial authorities when a case is referred may be covered by protective measures. Such might be the case in the indictment's supporting material. In order to guarantee fully the safety of the victims and witnesses, provision must be made so that the Tribunal may order that those protective measures be upheld.

- Setting out the criteria for the referral of a case.

42. Rule 11 *bis* of the Rules is currently silent as to the level of responsibility required for an accused to be prosecuted in a national court. Granted, this level is not easy to determine precisely and in the abstract, particularly in the context of a conflict which involved both leaders of States or autonomous entities and civilian and paramilitary groups capable of conducting a widespread policy of terror. However, for reasons of transparency *vis-à-vis* the international community and, more particularly, the States of the former Yugoslavia, in addition to the ability of the national courts to conform to international standards, the Tribunal should take into consideration the position of the accused and the gravity of the crimes with which he is charged. It will be for the Tribunal to assess and set out *in concreto* the main points of those criteria.

- Authorising the competent Trial Chamber to decide *ex officio* to refer a case after having given the Prosecutor and, where applicable, the accused the opportunity to be heard.

43. The Prosecutor objects to the fact that a Trial Chamber may decide *ex officio* to refer a case to a national court. She considers that this would infringe the powers conferred on her by the Statute. It should be noted that current Rule 11 *bis* of the Rules already gives a Trial Chamber the right to act *ex officio*.

44. Should the Security Council approve the above proposals, whether with or without an amendment of the Statute, Rule 11 *bis* would be amended accordingly. Furthermore, the signing of a judicial co-operation agreement between the Tribunal and the national authorities concerned would also have to be contemplated in order to implement concretely the referral

process as well as to resolve the practical problems involved, especially those relating to the mechanism for transferring the accused and handing over the indictments and supporting material.

PART II. BOSNIA AND HERZEGOVINA AND, ULTIMATELY, THE OTHER STATES OF THE FORMER YUGOSLAVIA MUST CARRY OUT CERTAIN REFORMS OF THEIR JUDICIAL SYSTEMS IN ORDER TO BE ABLE TO TRY THE CASES REFERRED BY THE TRIBUNAL

45. This part of the report will deal with the possibility of referring cases to the courts of Bosnia and Herzegovina as the Prosecutor believes that it is the only country that may now be considered for the referral process. This notwithstanding, should the Prosecutor's penal policy change, the Tribunal may contemplate broadening the process to other countries of the former Yugoslavia.

46. The authorities of Bosnia and Herzegovina have begun to reform their judicial system. However, many obstacles to the implementation of the referral process still remain (Chapter 1). Solutions must therefore be found with the assistance of the international community before the cases are referred to that State (Chapter 2).

Chapter 1. Principal reforms of the judicial system in Bosnia and Herzegovina

47. Bosnia and Herzegovina has begun to reform its judicial system. This clearly attests to its determination to comply with international norms.

48. To dwell on a description of all of these reforms here is not appropriate as that is not the purpose of this report, but it is worthwhile listing the reforms which seem the most relevant. They are as follows:

- incorporating violations of the law of war into the criminal codes;
- bringing the codes of criminal procedure into line with the international conventions on the protection of human rights, especially reinforcing the procedural guarantees during the preliminary investigation, judicial examination and trial;
- harmonising the rules of evidence with the requirements of a fair trial;
- adopting measures making it possible to guarantee the status and independence of the judiciary;
- adopting a code of professional conduct for the judiciary.

Chapter 2. Obstacles to setting the referral process in motion and prospects

Section 1. Obstacles to setting the referral process in motion

49. These first reforms are admittedly encouraging. Nonetheless, the judicial system of Bosnia and Herzegovina still seems to display shortcomings too great for it to constitute a sufficiently solid judicial foundation to try cases referred by the Tribunal.

50. According to information obtained from various documents, mostly from the Organisation for Security and Co-operation in Europe, the Council of Europe and the Office of the High Representative, the main obstacles to implementing the referral process are the following:

- Risk of dependency and partiality of the judiciary.

51. Several international organisations present in Bosnia and Herzegovina have underscored the highly politicised nature of the judicial system, as well as the risk of corruption to which such a situation gives rise. In the same vein, the ethnic composition of several of the cantonal and district courts might well lead to problems of bias and partiality[18].

- Lack or ineffectiveness of witness protection provisions.

52. A draft law on the protection of victims and witnesses was prepared but did not go beyond very general considerations. As such, the resulting system is far removed from the one in force at the Tribunal[19].

- Lack of training of the judiciary and law professionals.

53. As in many countries around the world, the members of the judiciary in Bosnia and Herzegovina seem to be lacking some of the experience required for conducting war crimes investigations and judicial proceedings.

- Insufficient financial and logistical resources.

54. The poor working conditions of the court personnel noted by many of the international experts can clearly only impair the effectiveness of the judicial system.

- Slowness of the judicial system.

55. As indeed in many western countries, the judicial system of Bosnia and Herzegovina must cope with the slowness of its proceedings, especially in appeal. The appeals courts often refer cases back to the trial judges who issue a second judgement which is again appealed. Furthermore, there is no limit to the number of times a case can pass back and forth between the courts.

- Incomplete compatibility of national substantive law with international law.

56. The compatibility of internal law with that applicable at the Tribunal can sometimes pose problems, notably as regards command responsibility. The principles applicable at the Tribunal, as laid down in Article 7 of its Statute, are not always applied, or even recognised, in national law.

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[18] The politicisation of judicial office is still perceptible despite the attempts made by the Independent Judicial Commission ("IJC") which is responsible for overseeing the judicial reforms under the authority of the High Representative. For example, the commissions and councils established to rule on whether or not complaints filed against members of the judiciary accused of corruption are founded have so far functioned poorly. Since March 2001, the IJC has been supervising the process by which the judges are evaluated by the competent commissions and councils and the judiciary appointment procedure has been greatly improved since the IJC set out criteria, in particular, for the recruitment interviews. The commission argues that under ideal circumstances the procedure applied in East Germany would be used, that is, all 558 of the judges would be dismissed and asked to reapply for their positions subsequently, which would enable it to review their applications in meticulous detail and to decide, on the basis of their record, whether they are fit to take on their position.

[19] According to current practice, any request for protection of a witness or victim must be submitted to the Supreme Court. If it approves the protective measures, the Court itself hears the witness, whose testimony will be re-transcribed and read out before the competent court at a later stage. If the parties have questions for the witness, they submit them in writing to the Supreme Court, which then puts them to the witness, and the same procedure is repeated over again.

57. All the international experts agree that these difficulties have resulted in the citizens of Bosnia and Herzegovina losing a great deal of confidence in their judicial institutions. It will be possible to re-establish judicial structures capable of responding to the demands of the population and the international community only if much effort is invested, some of it time-consuming.

Section 2. Prospects

1. Possible solutions

58. The aforementioned obstacles could be overcome in several ways. First, the local judges, prosecutors and court personnel could receive additional training in international criminal law and human rights. International judges could be sent to serve in national courts. International observers to oversee the conduct of the trials and, where need be, advise the judiciary could also be sent. More fundamentally, several aspects of the judicial system could be restructured.

59. In August 2001, the Prosecutor contacted the authorities of Bosnia and Herzegovina to suggest that they reflect upon the possibility of establishing an international court composed of a prosecutor and international judges. The Office of the High Representative seems to advocate the use of the future State Court which it considers as the institution in the best position to prosecute and try war criminals[20]. It has set up a working group to study the issue which should make its conclusions known in June 2002[21].

60. The respective advantages and disadvantages of the solutions may be summarised as follows[22]:

[20] The plan has not yet been finalised. Thus far, the Office of the High Representative has taken on a team of consultants to study how well adapted the plan is to the specific context of Bosnia and Herzegovina and to ascertain which mechanisms would make it possible to improve the current judicial system.

[21] The report of the Tribunal therefore does not take into account the conclusions of the working group of the Office of the High Representative.

[22] It should be noted that all the observers of the judicial system agree that the solutions proposed must make it possible to resolve the four following problems: 1. the compartmentalisation of the judicial systems of the two entities is a significant obstacle to the effective punishment of war criminals; 2. the public lacks confidence in its judicial authorities; 3. the ethnic make-up of the courts of each of the entities does not contribute towards inspiring such confidence; 4. the local judges do not have adequate training in international criminal law.

Possible solutions	Main advantages	Main disadvantages	Comparison of the main advantages and disadvantages
Use of the current national system together with training of the local judiciary in international criminal law	The solution 1. makes it possible to use the law and criminal procedure in force; 2. avoids the difficulties linked to implementing a reform of the judicial system; 3. ensures substantial support for the court personnel; 4. can be set in place in a short time.	The solution 1. does not encourage the efforts to reform the judicial institution; 2. limits the action taken to a single type of player in the judicial system.	1. Training the local judiciary is a worthwhile step since it offers a further guarantee of professionalism and, therefore, contributes towards bolstering the public's feeling of confidence in its judicial system. 2. Nonetheless, the proposed training of the judiciary will not in itself suffice to respond to the inherent requirements of the very specific context of Bosnia and Herzegovina. For example, it does not make it possible to resolve the difficulties linked to the compartmentalisation of the judicial systems, which will nonetheless have to be overcome if war crimes are to be punished effectively in Bosnia and Herzegovina.
Use of the current system together with the sending of international observers	The solution 1. makes it possible to use the criminal law and procedure in force without infringing upon State sovereignty; 2. avoids the difficulties linked to implementing a reform of the judicial system; 3. promotes the effective application of international norms; 4. can be set in place in a short time.	The solution 1. does not encourage the efforts to reform the judicial institutions; 2. might make the role of the observers uncomfortable (they could be restricted to a purely passive role); 3. must be applied in conjunction with measures guaranteeing the protection of the victims and witnesses.	1. The sending of international observers could, in the long term, make it possible to restore the confidence of the citizens in their own judicial system. 2. Nonetheless, the model remains insufficient because it does not allow the judicial institutions to be reformed directly, or the difficulties linked to the compartmentalisation of the two entities' judicial systems to be resolved.
Use of the current national system together with the addition of international judges to the local courts	The solution 1. makes it possible to use the criminal law and procedure in force; 2. makes it possible to guarantee that the international norms are better applied; 3. makes it possible to contribute to re-establishing the public's confidence in the local judicial system; 4. potentially enables the international judges to contribute to reforming the judicial system; 5. ensures effective collaboration between the Tribunal and the national	The solution requires significant legislative and judicial changes.	1. The sending of international judges would make it possible to resolve quickly and visibly a number of crucial difficulties pointed to by the international observers (especially the citizens' lack of confidence and the problems linked to the ethnic make-up of the courts). 2. Although it does not allow for a substantial reform of the judicial system, the solution does however have many considerable advantages in the specific context of Bosnia and Herzegovina (see column 1).

	courts; 6. can be set in place in a short time.		
Use of the State Court	The solution 1. makes it possible to use a local judicial institution currently being established; 2. contributes towards encouraging the effort to build the State by the State itself; 3. makes it possible to set in place a uniform practice for punishing perpetrators of war crimes, that is to say, one used State-wide; 4. can be set in place in a short time.	The solution 1. requires national legislation to be reworked in order to establish a specialised chamber at the court concerned; 2. creates a difference between the jurisdictions and powers of the Court and the Tribunal, which are distinct; 3. might bring about a lack of consistency between the procedure applied at the Tribunal and that at the State Court; 4. does not best guarantee the availability and qualifications of the personnel assigned.	1. Using a court currently being set up seems appropriate, as Bosnia and Herzegovina already has many courts. 2. The creation of the court is consistent with the provisions of the national constitution. 3. The creation of a State-level court will make it possible to resolve the problem linked to the separation of the entities, which currently causes major difficulties for punishing the accused. 4. Such a court could be operational quite quickly, as both observers and players involved in the national system agree that the reform of the national system must commence as soon as possible.
Establishment of a special international court	The solution 1. makes it possible to have a judicial structure perfectly adapted to the transfer of cases (it would be given exhaustively defined powers similar to the Tribunal's); 2. guarantees that international norms are applied effectively (especially as regards witness protection); 3. ensures that the Special Court's rules are compatible with the Tribunal's; 4. guarantees that prosecutions are carried out professionally (by making judges and qualified court personnel available).	The solution 1. requires that an additional court be set up. This involves: (a) the adoption of a Security Council resolution; and (b) an amendment of the national constitution which would give rise to long and complicated procedures; 2. would make it necessary to use a criminal procedure greatly different and far removed from the local judicial traditions; 3. would require considerable time to set up an institution of this kind; 4. would compel the international community to assume a considerable financial burden. 5. would be tantamount to not encouraging some of the necessary local reforms; 6. would prevent national judges from trying war criminals as they would defer to international judges.	1. Using a single court fully adapted to trying international crimes seems very attractive. 2. Nonetheless, the establishment of an international court in Bosnia and Herzegovina does not seem appropriate since it in no way contributes towards the reform of the judicial system sought.

2. Solutions recommended by the Tribunal

61. Which model is the most appropriate depends primarily on the specific nature of the cases likely to be referred, cases which, let us not forget, concern war crimes and crimes against humanity.

62. Even if by definition a special international court is perfectly adapted to trying war crimes and crimes against humanity, the option of setting one up presents three major disadvantages. First, it could not be operational immediately since it would require the Security Council to pass a resolution, which cannot be taken for granted. The court would also be extremely expensive, as this would amount to setting up a "mini-International Tribunal" in Bosnia and Herzegovina. Lastly, the solution would add a further court to Bosnia and Herzegovina's already greatly complex judicial scene.

63. The State Court appears much more conducive to reconciling the specific requirement of punishing war crimes and crimes against humanity with the particularities of Bosnia and Herzegovina's judicial system. Among the many advantages of using this Court, special mention should be made of the fact that it conforms fully with the provisions of the constitution, according to which the State has exclusive jurisdiction in matters of international criminal law. In this respect, it should be noted that, in September 2001, the Constitutional Court found that the creation of the State Court was consistent with the constitution.

64. Furthermore, with the State Court it should be possible to guarantee that all areas of law are uniform on a national level as well as to resolve the excessive compartmentalisation of the judicial system between the two entities, which has been particularly apparent in the prosecution and trial of war crimes.

65. Using the State Court would avoid having to set up an additional court whilst also supporting the effort to build the State by the State itself. This is an essential advantage because, as all the observers and players involved in the judicial system of Bosnia and Herzegovina agree, any reform of the judicial system's structures can produce results only if it is consonant with the legal traditions of the State and is carried out with the close co-operation of the existing judicial authorities.

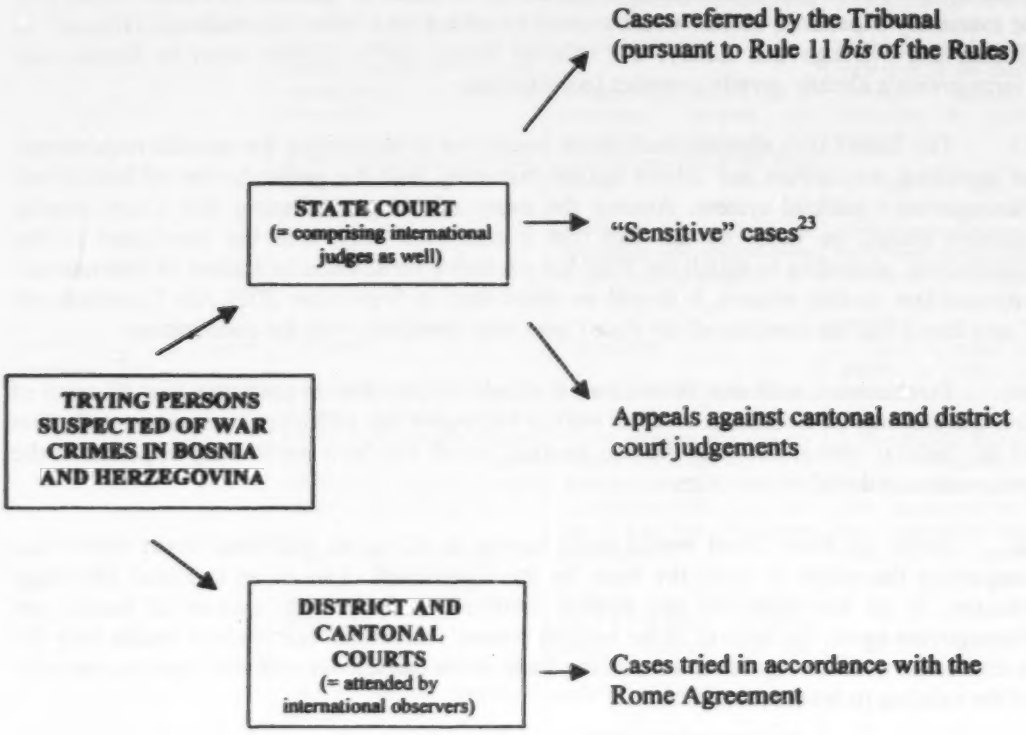
66. Furthermore, the district and cantonal courts should assist the work of the State Court, which alone will not be able to try the very large number of war crimes cases. We are aware that in addition to all the cases involving intermediary-level accused which should be referred by the Tribunal pursuant to Rule 11 *bis* of the Rules, there are all those involving subordinates which the national courts are hearing in accordance with the Rome Agreement which, as we have seen, may number several hundred.

67. The process advocated by the Tribunal precludes a complete upheaval of the judiciary in Bosnia and Herzegovina. Although new structures must admittedly be established, it is also crucially important to work with the existing judicial institutions and organs, if only by helping to make them better, as they constitute irreplaceable reference points for the citizens of Bosnia and Herzegovina. Only by so doing will it be possible to restore the citizens' confidence in the judicial institutions rooted in their culture.

68. In conclusion, the State Court should handle only those cases involving intermediary-level accused which have been referred by the Tribunal, as well as certain cases over which

the district and cantonal courts would ordinarily have jurisdiction but whose sensitive nature requires that they be tried on the national level, an assessment which would be made by the prosecutor of the Court. In addition, the State Court could hear appeals against cantonal and district court decisions. Lastly, international observers should monitor the conduct of proceedings before the district and cantonal courts responsible for trying subordinates in accordance with the Rome Agreement in order to ensure that they conform with the most fundamental guarantees of the criminal trial.

69. The following flowchart illustrates this.


Cases referred by the Tribunal (pursuant to Rule 11 *bis* of the Rules)
STATE COURT (= comprising international judges as well)
"Sensitive" cases[23]
TRYING PERSONS SUSPECTED OF WAR CRIMES IN BOSNIA AND HERZEGOVINA
Appeals against cantonal and district court judgements
DISTRICT AND CANTONAL COURTS (= attended by international observers)
Cases tried in accordance with the Rome Agreement

3. Pre-requisites for implementing the recommended solutions

70. Whichever model is selected and whichever reforms are implemented, the participation of the national courts in trying war criminals presupposes that they are in a position to make impartial and independent rulings, in accordance with the principles laid down in the Statute.

71. As such, the authorities concerned should – if they have not done so already – adopt general provisions inherent to the proper functioning of any judicial system, as well as more specific provisions in order to make it possible to punish war crimes and crimes against humanity:

[23] The prosecutor of the Court should decide whether the sensitive cases must be tried by the State Court or the district and cantonal courts.

72. Bosnia and Herzegovina must adopt general provisions in order to:

- ensure fully the impartiality and independence of the judiciary[24] and, in particular, prevent the political authorities from being able to interfere in investigations;

- make sure that arrest and pre-trial detention are covered by guarantees[25];

- ensure that trials are fair[26];

- make sure that the accused and detainees are treated equally no matter their nationality, political views or religious beliefs;

- respect the minimum criteria for the detention conditions of detainees and convicted persons;

- abolish the death penalty and preclude any possible means of reintroducing it.

73. We believe it vital to adapt the existing national laws to the over-riding needs of punishing war crimes and crimes against humanity. Specifically, this would involve:

- sending international judges to serve in the courts responsible for trying cases referred by the Tribunal;

- making the national judiciary more familiar with the rules of international criminal law, through training;

- adapting certain aspects of internal criminal procedure to the requirements of international criminal procedure, especially for the protection of victims and witnesses;

- ensuring that all the serious violations of international humanitarian law established under articles 2 to 5 of the Tribunal's Statute and the principles governing individual criminal responsibility embodied in article 7 thereof are provided for in internal criminal law.

[24] This means in particular that the members of the judiciary must be sufficiently remunerated and their independence guaranteed.

[25] This means in particular that deprivation of liberty must be restricted to those cases provided for by article 5(1)(c) of the European Convention on Human Rights and that the accused must have the right to be assisted by counsel, where need be, assigned. The Tribunal recalls that the Constitution of the Republic of Bosnia and Herzegovina provides for the direct applicability of international human rights norms, in particular, those of the European Convention on Human Rights and its protocols, and affirms their primacy over internal law (article 2 of the Constitution).

[26] This means in particular that public proceedings must be guaranteed, that the accused must be tried within a reasonable time, that the principles of the presumption of innocence and the equality of arms must be respected and that the victims and witnesses must be duly protected.

CONCLUSION

74. The observations and recommendations in this report are in keeping with the directions the President and Prosecutor presented to the Security Council on 27 November 2001 and which the Registrar reiterated before the Fifth Committee of the United Nations General Assembly during the 2002-2003 budget vote.

75. The main purpose of implementing the Tribunal's completion strategy and referring cases involving intermediary-level accused to the courts of Bosnia and Herzegovina is to complete the first instance trials by around 2008. At that point, the Tribunal will be able to devote all of its resources to appeals, reviews and other proceedings. Our view is that two further judges' mandates will be required to complete these proceedings, which means that the Tribunal will finish its work definitively around 2010.

76. Are these dates unreasonably distant? We do not believe so. Admittedly, such an institution is a considerable financial responsibility and the international community does view it as such. However, as the Expert Group set up to assess the effectiveness of the Tribunal's activities and operations stated in its report of November 1999, "[t]o the extent that there may have been expectations that the Tribunals could spring to life and, without going through seemingly slow and costly developmental stages, emulate the functioning of mature experienced prosecutorial and judicial organs in national jurisdictions in adhering to a high standard of due process, such expectations were chimerical". What is more, account must be taken of the fact that, in all, the Tribunal should have to deal with 74 indictments involving 232 accused, including of course those cases which could be referred to the courts in Bosnia and Herzegovina. These figures are both high and low when compared to the thousands of crimes perpetrated in the territory of the former Yugoslavia during the years of war which could theoretically be subject to international justice.

77. Yet, the dates and commitments set out take into consideration a not-insubstantial degree of uncertainty of which we should not lose sight. It must not be forgotten that arrests have to be effective and rapid, all the accused arrested together, the political situation in the region stabilised and the local courts appropriately adapted so that cases can be referred under conditions consonant with the demands for the protection of human rights and the principles of international humanitarian law – all conditions beyond the direct control of the Tribunal. It must be emphasised that the Tribunal's timetable will definitely have to be reviewed if all these conditions are not met.

78. Are there any other possible ways of accomplishing our mandate more expeditiously? We have always maintained that the current and future reforms could deliver further productivity gains and these include the reforms to the operations and structure of the Appeals Chamber and the creation of an international bar. Other procedural adjustments are under consideration.

79. Yet, let us not deceive ourselves. In terms of the length of the Tribunal's mandate, the gain will be relatively small. The conclusions in this report must therefore be viewed as attainable and reasonable.

80. Is an even more drastic shortening of the Tribunal's mandate possible? Perhaps, although this would presuppose that decisions are taken which, as the texts now stand, would be beyond the province of the drafters of this report. It would also potentially ruin the effort

invested over several years to establish an exemplary system of international justice and could be detrimental to reconciliation in the former Yugoslavia and, thus, keeping the peace.

81. In brief, they involve:

- setting a date for the end of investigations earlier than 2004 as announced by the Prosecutor herself, or indeed, setting a specific terminal date for the mandate. At this time, it appears that no competent authority other than the Prosecutor has the power to do so in respect of the investigations. Granted, the Security Council could set a terminal date for the Tribunal's mandate. As yet, this has not been done. Furthermore, no new factor seems likely to warrant setting such a date[27]. Quite on the contrary, since the Tribunal has never experienced such intense activity. Moreover, even if it were possible, setting the end of the mandate would be profoundly prejudicial to the principle of equality between all the accused, since high-ranking leaders not indicted would be shielded from any prosecution whereas other lower-ranking accused would be tried at The Hague. Would not the credibility of the Security Council be lessened as a consequence?

- concentrating all of the Tribunal's activity on holding a very limited number of particularly exemplary trials. The Prosecutor and, to a lesser extent, the judges could work towards achieving this goal. Perhaps the Security Council should deal with the issue by defining the mandate of the Tribunal more precisely in the Statute or by using any other method it might deem appropriate. It must however be noted that this was not the option originally selected which would have required the highest-ranking military and political leaders to be indicted and arrested at the very outset of the Tribunal's mandate.

- changing the procedure radically to further expedite the trials. Here too the room for manoeuvre is limited. The Rules have been amended over 20 times and this has given rise to much criticism, among some defenders of human rights in particular. Moreover, amendments instituting more expeditious proceedings could run contrary to the Statute. Since current procedure represents a fairly good balance between the two major legal systems, sweeping changes to it could be profoundly prejudicial to the fairness of the trials.

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82. These are the conclusions of the Tribunal's three organs responsible for the mission assigned to them when the Tribunal was established. Naturally, this report represents only one contribution among others to the process of reflection undertaken by all those whose concern, like ours, is to fulfil the mandate given to us by the Security Council: to combat impunity and to render justice to the victims of war crimes and crimes against humanity.

[27] In this respect, it should be said that on 21 February 2001 pursuant to paragraph 6 of Security Council resolution 1329 (2000), the Secretary-General studied how feasible it was to set a terminal date for the temporal jurisdiction of the Tribunal. He considered "that he [was] not in a position to make an assessment to the effect that peace ha[d] been restored in the former Yugoslavia" and so asserted that he was "not in a position to recommend to the Security Council [such] a date" (Report of the Secretary-General pursuant to paragraph 6 of Security Council resolution 1329 (2000) (S/2001/154)).

PROPOSALS TO THE MEMBERS OF THE SECURITY COUNCIL

83. In order to wind down its mission – that is to complete its investigations around 2004 and its first instance trials around 2008 – the Tribunal must:

- further concentrate its activity on the prosecution and trial of the highest-ranking political and military leaders;
- refer intermediary-level accused, even if they are not yet in the custody of the Tribunal, to the national courts, principally, those of Bosnia and Herzegovina,

84. So as to implement this two-pronged process of "concentration" and "referral", the Tribunal intends to take certain measures in order to ensure that: (1) the accused answer in the national courts for all the crimes specified in the indictments brought by the Prosecutor and confirmed by the judges of the Tribunal; (2) the national courts respect the protective measures ordered by the Tribunal for the victims and witnesses; (3) the national trials are conducted in accordance with the international norms for the protection of human rights.

85. With this in mind, the Tribunal is recommending that a Chamber with the jurisdiction to try the accused referred by the Tribunal be established within the State Court of Bosnia and Herzegovina. It is suggesting that international judges serve alongside the national judges in the State Court for at least a set period. It is proposing that the local prosecutors, judges and court personnel receive training in international humanitarian law. It is considering the possibility of having international observers ensure that the proceedings instigated in the district and cantonal courts pursuant to the Rome Agreement are conducted properly.

86. It is the Tribunal's wish that the Security Council endorse this overall approach and, more specifically, approve the aims set out in paragraph 83 and the mechanisms envisaged in paragraph 84.

PROGRAMME OF ACTION

87. We propose taking the following short- and long-term action in co-operation with the international organisations and States concerned in order to implement the proposals in this report:

1 – 23 April 2002: presentation of this report to the judges at the plenary by the President, Prosecutor and Registrar; adoption of an agreement in principle on the major directions set out in the report; and proposal to refer the matter to the Security Council;

2 – 23 April to 10 June 2002: incorporation of the judges' comments into the report following the plenary;

3 – 25 April 2002: meeting with the group of consultants studying which solutions to implement in order to try war criminals in Bosnia and Herzegovina, with a view to setting a course of action which takes into consideration the concerns shared by the Tribunal and the Office of the High Representative;

4 – 10 June 2002: sending of the report to the Secretary-General and the Legal Counsel of the United Nations, as well as to the Office of High Representative to Bosnia and Herzegovina;

5 – 17 June to 21 June 2002: visit of the President, Prosecutor and Registrar to Bosnia and Herzegovina and meetings with the political and judicial authorities concerned to discuss the directions set out in this report and to evaluate the feasibility of its conclusions;

6 – 27 June 2002: holding of a diplomatic seminar in The Hague to present the report to the diplomats serving in The Netherlands;

7 – 11 and 12 July 2002: adoption of new amendments to the Rules in order to expedite proceedings further;

8 – July 2002: submission of the report to the members of the Security Council;

9 – first quarter of 2003: implementation of the process for referring cases to national courts.

88. Of course, the timetable can be met only if all the parties involved co-operate fully. The United Nations, the Office of the High Representative and the States of the former Yugoslavia, particularly Bosnia and Herzegovina, must assume their respective responsibilities in order to contribute to improving the existing judicial structures so that the referral process envisaged by the Tribunal may begin in January 2003.

United Nations S/2002/679

Security Council

Distr.: General
19 June 2002

Original: English

Fourteenth report of the Secretary-General on the United Nations Mission in Sierra Leone

I. Introduction

1. By its resolution 1400 (2002) of 28 March 2002, the Security Council extended the mandate of the United Nations Mission in Sierra Leone (UNAMSIL) for a period of six months, until 30 September 2002. In that resolution, the Council also requested me to submit, before 30 June 2002, an interim report assessing the post-electoral situation and the prospects for peace consolidation in Sierra Leone. The present report is submitted pursuant to that request and describes the priorities for UNAMSIL in the months ahead.

II. Elections

2. The Sierra Leone presidential and Parliamentary elections were held as scheduled on 14 May. The special election to facilitate voting by the military, police and electoral personnel who were to be on duty on polling day took place earlier, on 10 May, and the election of the parliamentary representatives of paramount chiefs was held on 10 June.

3. A total of 9 political parties, including the Revolutionary United Front (RUF) Party (RUFP), fielded presidential candidates, and 11 parties contested the parliamentary election. President Kabbah won 70.06 per cent of the presidential votes, while Ernest Koroma of the All People's Congress came in second with 22.35 per cent, and the former leader of the Armed Forces Revolutionary Council (AFRC)/ex-Sierra Leone Army (SLA), Johnny Paul Koroma, ended up in third place with 3 per cent. The RUFP candidate received 1.7 per cent of the votes. President Kabbah was sworn in on 19 May, and on 21 May he announced a new Cabinet, which consisted only of persons affiliated with his political party.

4. Three political parties managed to win parliamentary seats. President Kabbah's Sierra Leone People's Party won 83 of the 124 seats, the All People's Congress won 27 seats, and Johnny Paul Koroma's Peace and Liberation Party won 2 seats. The remaining 12 parliamentary seats were filled by representatives of paramount chiefs, who were elected on 10 June, as indicated above.

5. The voting, on both 10 and 14 May, as well as on 10 June, was conducted in a remarkably peaceful atmosphere. No incidents of violence were reported. According to the National Electoral Commission, a total of 1,907,465 votes were cast in the presidential and parliamentary elections, representing 81 per cent of the registered voters.

6. The electoral campaigning, which started on 5 April and ended on 11 May, was generally peaceful. However, on the last day of campaigning, supporters of the ruling Sierra Leone People's Party and RUF clashed during rallies in Freetown, resulting in injuries to 16 people. As the Sierra Leone police were overwhelmed by the crowd, UNAMSIL had to deploy a platoon of 30 soldiers, who effectively dispersed the crowd. Thereafter, there were no further disturbances in Freetown, nor in the districts.

7. A total of 207 electoral observers from the Commonwealth, the European Union, the Organization of African Unity (OAU), the Economic Community of West African States (ECOWAS) and the Carter Centre, as well as some 3,500 local observers fielded by 18 Sierra Leonean civil society groups and the Council of

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Churches of Sierra Leone, observed the elections. The observers characterized the elections as free, transparent and generally violence-free. Some technical and logistical difficulties were cited, in particular in connection with inadequate voter education and names missing from voters' registers, but it was noted that these did not mar the elections. All the opposition political parties, including RUFP, accepted the election results and announced their commitment to working with President Kabbah in rebuilding the country.

United Nations role in the elections

8. UNAMSIL temporarily redeployed 11,000 troops to some 200 high-risk areas throughout the country, and assisted the Sierra Leone police in deploying 4,400 police personnel as well as mobile armed units to provide security for the elections. In addition, the Mission provided critical logistical support to the National Electoral Commission. Together with the United Nations country team, UNAMSIL extended logistical assistance to the national and international electoral observers. The United Nations Development Programme (UNDP) funded the deployment of 30 observers from ECOWAS and OAU and procured 12,000 ballot boxes, as well as vital communications equipment for the National Electoral Commission and the police. UNAMSIL's electoral component closely monitored the various stages of the electoral process and reported on key issues, which enabled my Special Representative to advise the National Electoral Commission on rectifying shortcomings.

9. The deployment of an additional 30 United Nations civilian police personnel to UNAMSIL greatly enhanced the assistance provided by the Mission to the Sierra Leone police in developing their operational plan for the elections. The Mission's Public Information Section supplemented the National Electoral Commission's voter education efforts and on polling day deployed reporters to all electoral districts, while Radio UNAMSIL provided 24-hour coverage of the elections. On polling day, the Special Representative of the Secretary-General and his two deputies separately visited polling stations countrywide and advised National Electoral Commission officials on resolving arising problems. UNAMSIL's military and civilian personnel visited a total of 4,700 out of the established 5,256 polling stations to monitor events on polling day.

III. Post-election security situation

10. The successful conduct of the elections marked the end of the second phase of UNAMSIL's military concept of operations for 2002, whose main objective was to provide effective security and logistical support for the elections. At the end of the elections, UNAMSIL troops redeployed to their previous 39 locations and continued to mount robust patrols to deter any possible disturbances. The Mission is currently implementing the third phase of the concept of operations, focusing on sustaining the prevailing stability and monitoring how the newly elected Government, as well as the army and police, consolidate their authority.

11. The overall security situation in Sierra Leone has remained generally stable in the wake of the elections. However, continuing protests by ex-combatants, who are dissatisfied with the late payment of their allowances, have created tension in some areas. Civil Defence Forces combatants demanding certain benefits from the Government have also caused disturbances, particularly in Moyamba. In addition, friction between returning populations and ex-combatants, involving disputes over illegally occupied houses, and relations between former RUF combatants and their erstwhile comrades who have joined the ruling party, have been a source of tension in the volatile Tongo and Kailahun areas. UNAMSIL troops have provided support to the Sierra Leone police in containing disturbances, while military observers and civil affairs officers have mediated in disputes over illegally occupied houses.

12. Some political parties have complained to UNAMSIL about harassment by supporters of the ruling party. Although these reports could not be verified, UNAMSIL has expressed concern to the Government that such acts could be a source of destabilization. The results of the special elections, which appeared to indicate that the armed forces personnel voted in large numbers for former AFRC/ex-SLA leader Johnny Paul Koroma, also raised fears about possible retaliation against these personnel and created widespread anxiety about their loyalty to the Government. To address these concerns, President Kabbah toured army deployment locations across the country and assured them that they would not be penalized for exercising their right to vote for a candidate of their choice. Senior army officers

subsequently met with the President and pledged the loyalty of the armed forces to the Government.

13. The escalating conflict in Liberia is increasingly affecting the stability of the areas along the border in Sierra Leone. On several occasions, elements from both the Armed Forces of Liberia (AFL) and Liberians United for Reconciliation and Democracy (LURD) raided Sierra Leonean villages while foraging for food. There is concern that such incidents could increase as the rainy season approaches. A number of Liberian soldiers have also approached UNAMSIL and Sierra Leone army deployment locations to seek refuge from the fighting in Liberia. In addition, the Government of Sierra Leone has expressed concern about the possible existence of armed Liberian elements among the large number of refugees fleeing into the southern and eastern districts of the country.

14. The Sierra Leone army has reinforced its deployments in the border areas to prevent incursions by both LURD and AFL elements. However, the effectiveness of the army is limited by logistical shortcomings, which are likely to be aggravated by the rainy season. UNAMSIL has also increased ground and air patrols in these areas to deter incursions. The UNAMSIL Force Commander met with the Liberian Defence Minister at Bo Waterside on 28 May and urged him to take measures to prevent AFL incursions. My Special Representative has also met with the leaders of Senegal, Nigeria, Ghana and Mali, as well as the Executive Secretary of ECOWAS, to draw their attention to the threat posed by the conflict in Liberia to the progress achieved in Sierra Leone.

IV. Looking ahead after the elections

15. In its resolution 1400 (2002), the Security Council emphasized the importance of the continuing support of UNAMSIL to the Government of Sierra Leone in the consolidation of peace and stability after the elections. In this regard, UNAMSIL is concentrating on maintaining a security environment that will allow the Government to firmly establish its authority, and is addressing the unfinished aspects of the peace process, which include the reintegration of ex-combatants, the consolidation of State authority throughout the country and the promotion of justice, human rights and national reconciliation. For its part, the United Nations country team is addressing issues related to national recovery and building the capacity of the Government to deliver critical services to the population, especially in the provinces. In this context, UNAMSIL and the Secretariat have identified the priorities set out below, which must be tackled urgently in the coming months in order to consolidate the peace, while the United Nations country team has developed a draft strategy for supporting recovery efforts.

Security issues

16. Security will remain a paramount concern until the capacities and reliability of Sierra Leone's security institutions are sufficiently developed to enable them to sustain, on their own, the security environment created by the presence of UNAMSIL. As indicated in my last report (S/2002/267), I intend to submit, in my September report to the Security Council, detailed proposals concerning the gradual downsizing of UNAMSIL and its eventual exit from Sierra Leone. In this connection, the Secretariat dispatched a military team to Sierra Leone from 9 to 14 June to assist UNAMSIL in developing these proposals. A crucial element in planning for the anticipated adjustments in the military component of UNAMSIL is the strengthening of the capacities, accountability and loyalties of both the police and the army of Sierra Leone, as well as the establishment of an effective coordination mechanism with UNAMSIL, in order to avoid a security vacuum when UNAMSIL eventually withdraws.

17. The Sierra Leone police are now a much-improved force as a result of the training provided by the United Nations civilian police component and the Commonwealth police training team, as well as the equipment provided by the Government of the United Kingdom and UNDP. However, the force still faces serious capacity problems and resource constraints. The force levels have to be increased to at least pre-war strength (9,000, from the current 6,000), the training of personnel needs to be enhanced and support equipment improved. The expansion of the force is currently unfunded, and training facilities are inadequate. The police presence in the districts is unevenly spread and poorly equipped. In order to address these issues, the United Nations civilian police will work together with the leadership of the Sierra Leone police and the Commonwealth team to develop a work plan that identifies critical security challenges and key priorities to enable the police to assume primary responsibility

for internal security over the next 12 to 18 months, as part of the overall strategy for the gradual disengagement of UNAMSIL.

18. With regard to the Sierra Leone army, it is clear that the Government will continue to rely heavily on the training assistance provided by the United Kingdom and the International Military Advisory and Training Team. The army has completed its deployments to permanent garrison locations across the country. However, the sustainability of these deployments is a matter of concern. The rudimentary state of the permanent garrison locations, the makeshift character of their accommodation and the poor state of the roads for resupply combine to decrease their effectiveness.

19. As planning for the adjustments in UNAMSIL's military presence proceeds, the Mission is closely monitoring the effectiveness and conditions of the Sierra Leone army, and will coordinate and consult closely with the Government and the leadership of the army on the security implications of its drawdown plans. In addition, it will be important to ensure that the future plans regarding the army, as well as the plans for the recruitment and training of the police, are synchronized with UNAMSIL's drawdown plans in order to achieve the principal goal of avoiding a security vacuum after the departure of the Mission.

Effective reintegration of ex-combatants

20. A total of 6,490 former combatants have so far completed the reintegration process, and an additional 20,628 are currently participating in reintegration projects in the agricultural sector, as well as in vocational training, formal education and small enterprises. Of these, 566 are in child-reintegration projects. Under the current plans, it is envisaged that up to 7,000 ex-combatants will be recruited for reintegration projects every six months. However, the programme is still plagued by a shortfall of $13.4 million in funding, as well as limited opportunities and administrative shortcomings on the part of the National Commission for Disarmament, Demobilization and Reintegration. The ex-combatants awaiting reintegration opportunities represent a potential threat to stability. As indicated earlier, some of the ex-combatants have held demonstrations in several parts of the country, protesting non-payment of allowances.

21. UNAMSIL, UNDP and the Governments of the United Kingdom, the United States and Japan are supporting stopgap projects to occupy some of the ex-combatants until long-term reintegration opportunities are available. In the coming months, a total of 33 such projects are expected to provide short-term support to some 2,000 ex-combatants. In addition to implementing these projects, UNAMSIL will continue to advise the National Commission for Disarmament, Demobilization and Reintegration on how to overcome its operational shortcomings, as well as encourage it to ensure a balanced geographical spread of reintegration opportunities. The Mission will also monitor ex-combatants, most of whom still live together as groups in potentially volatile areas such as Tonkolili, Kono, Kailahun and Kenema districts.

Extension of State authority

22. The restoration of effective local government structures remains vital to the stabilization of the many areas that were not controlled by the Government during the conflict. Since the completion of the disarmament process in January, UNAMSIL, UNDP and international partners have facilitated the deployment of Government administrators and the police in all districts. Most paramount chiefs have also returned to their chiefdoms. However, there are serious capacity constraints, especially in the newly accessible areas, that will require major investments in staffing, training and equipment over several years.

23. In order to support the Government in addressing some of these issues, UNDP has provided assistance for the drafting of new local government legislation, which is expected to be adopted by the new Parliament. UNAMSIL will continue to work closely with the Government, UNDP and donors to help restore basic administrative capacity and to monitor shortcomings that may undermine local stability. In order to strengthen UNAMSIL's effectiveness in this regard, it will be necessary, as adjustments are made in the composition of the Mission in the coming months, to ensure that the Mission's Civil Affairs component is staffed with personnel who have expertise in public administration; they would be deployed in the districts to support and provide advice to local government administrators on capacity-building.

Governance issues

24. A particular challenge will be to address the long-standing problems of the judicial system in Sierra Leone. This will require a comprehensive and sustained effort on the part of the Government, with the support of the international community, towards the rebuilding of an impartial, transparent and independent judiciary. The Government has appointed chairmen for all local courts as well as justices of the peace, who would handle minor civil and criminal cases. However, only 5 of the 14 magistrate courts in the country are currently functioning, albeit with very limited capacity in terms of trained personnel and logistics. UNAMSIL, UNDP and the Government of the United Kingdom are now coordinating their efforts to facilitate the early extension of judicial coverage through the provision of logistical support and the immediate rehabilitation of key infrastructures.

25. The actions and policies of the newly elected Government will be crucial to the efforts to consolidate the peace and sustain stability. In particular, it is vital for the Government to maintain a culture of tolerance that allows continued peaceful political competition. In this connection, it may be recalled that one of the principal objectives of the Sierra Leone peace process was to integrate RUF into the political mainstream. In the light of RUFP's failure in the elections, a major challenge for the Government will be to find ways of keeping that party engaged in the democratic process. UNAMSIL will therefore continue to encourage the inclusion in the political process of not only RUFP, but also other minority parties. To this end, my Special Representative intends to facilitate the continuation of the healthy political dialogue that was a key factor in reaching national consensus on elections. It is also important for both the Government and the international community to continue to encourage the RUFP leadership to continue to develop their political party.

Promoting human rights, national reconciliation and justice

26. UNAMSIL's Human Rights Section continued to conduct investigations into past human rights abuses and grave breaches of international humanitarian law. The Section is in the process of analysing testimony from more than 150 victims of war-related amputations, more than two thirds of whom were purposely mutilated. In addition, preliminary investigations into the existence of mass graves were carried out in the districts of Kailahun, Port Loko, Koinadugu and Bombali. On 20 May, the Mission opened a fourth regional human rights office in Koidu.

27. Progress was made on the establishment of the Truth and Reconciliation Commission during the reporting period. The interim secretariat of the Commission, staffed by an Executive Secretary, three international advisers and six national advisers, began functioning on 25 March. On 13 May, President Kabbah announced the appointment of the four national and three international Commissioners. However, the inauguration of the Commission, which, under the relevant statute, was supposed to take place on 1 June, had to be postponed because of difficulties in mobilizing funding. To date, of the $10 million budgeted for the Commission, only $1.2 million has been pledged.

28. Further steps have also been taken towards the establishment of the Special Court for Sierra Leone. In May, Mr. Robin Vincent (United Kingdom) was appointed Acting Registrar of the Special Court, pending consultation with the President of the Court, and Mr. David Crane (United States) was appointed Prosecutor. The candidates for judgeships, nominated by their respective States of nationality, are being interviewed with a view to their appointment and assignment to either the Trial or the Appeals Chambers. In Sierra Leone, the Special Court Agreement, 2002 (Ratification) Act, was enacted by Parliament as implementing legislation. The powers and competences of the Special Court have thus been given legal effect in the national legal system of Sierra Leone.

29. The financial arrangements and accounting procedures for the transfer of contributions from the Trust Fund to the Special Court are still under consideration. The Financial Regulations and Rules and the Staff Regulations and Rules of the Special Court, based on the United Nations Financial and Staff Regulations and Rules and adapted to the circumstances of the Special Court, have been provisionally approved by the Management Committee subject to further consideration. The conclusion of a loan agreement between the United Nations and the Special Court for the release of personnel to the Special Court is still pending.

30. It is anticipated that, with the conclusion of the financial arrangements and the loan agreement, the Acting Registrar and an advance team will in the very near future be able to establish a core presence in Sierra Leone, lay the financial and administrative basis for the start-up phase of the Court's operation, begin the process of recruiting personnel and conclude an agreement with UNAMSIL on the terms and conditions of its cooperation with the Special Court in the provision of administrative and logistical support. The Prosecutor, with an advance team of investigators and prosecutors, will then launch the investigative and prosecutorial process.

31. UNAMSIL support for bodies dealing with past abuses, such as the Truth and Reconciliation Commission and the Special Court, will continue to be a top priority. The Mission will seek to link these initiatives for truth, justice, redress and reconciliation with the rebuilding of institutions of the rule of law and with the reform of law and justice in the post-conflict situation. Human rights training and capacity-building programmes will be conducted with, inter alia, the police, the judiciary, the legal profession, civil administration, traditional authorities, the human rights community and, through the media, the general public.

Regional issues

32. As indicated in paragraphs 13 and 14 above, the conflict in Liberia threatens to undermine the progress achieved in Sierra Leone. UNAMSIL is therefore closely monitoring developments in the border areas and initiating contacts with Liberian security officials, as well as the leaders of the subregion, aimed at averting a spillover of the conflict into Sierra Leone. Developments in Liberia constitute one of the key factors being taken into account in the ongoing planning for the drawdown of UNAMSIL.

V. Transition to national recovery

33. In order to ensure a coordinated and complementary approach to the ongoing recovery process, in May the National Recovery Committee adopted the first volume of a national recovery strategy, covering the newly accessible districts in the eastern and northern parts of the country. The strategy focuses on immediate actions to address essential needs of the population, while laying the foundation for the transition towards sustainable development. Aimed at promoting stability in the country, it sets priorities in six major areas, namely, the restoration of civil authority; improvement in the delivery of basic social services; facilitating resettlement and reintegration; promotion of reconciliation and rights; stimulating economic revival; and improving access. As indicated in paragraph 15 above, the United Nations country team has also prepared a draft peace-building and recovery strategy that outlines how the humanitarian and development branches of the United Nations can contribute cohesively to the recovery process.

34. A central aspect of the recovery process is the facilitation of the resettlement of internally displaced persons and returning refugees. They are returning to areas that are among the poorest and most devastated, and where concentrations of ex-combatants are high. The third phase of the national resettlement programme commenced on 28 March and ran through 30 April, at which point operations were suspended for the election period. Some 120,000 internally displaced persons were resettled in the newly accessible areas during this phase. The fourth phase, under which 13,000 people are expected to be resettled, started in the first week of June. UNAMSIL and the International Organization for Migration have provided transportation support for moving these returning populations, as well as returning refugees.

35. The Office of the United Nations High Commissioner for Refugees has expanded the resettlement of returnees to chiefdoms in Kono and Kailahun districts. Since March, more than 30,000 returnees have been resettled and more than 15,500 Sierra Leonean refugees repatriated (about 7,500 from Guinea and about 8,000 from Liberia). At present, approximately 22,000 returnees continue to reside in temporary settlements or host communities, in one chiefdom in Pujehun district. It is estimated that about 165,000 Sierra Leonean refugees continue to receive asylum in the subregion. Within its capabilities, UNAMSIL will continue to provide support to the returning refugees and displaced persons in its areas of deployment.

36. The physical relocation of formerly displaced families is just the first step in the resettlement process. Emphasis now needs to be fully focused on providing support for the establishment of viable community recovery programmes, involving all humanitarian and

development actors and working closely with the Government counterpart agencies. Efforts are being made to establish effective monitoring mechanisms in the main resettlement areas to ensure that community needs are being met and addressed in the most effective manner.

37. Another recovery priority is to stimulate economic revival. In this regard, the Government of Sierra Leone considers the mining sector a significant potential source of economic growth and poverty reduction. However, if the sector is left uncontrolled or if its resources are diverted for personal gain, there is the potential that the country could be destabilized. Arrangements put in place are not fully functional and consequently have yet to yield the maximum returns to Sierra Leone. The Ministry of Mineral Resources, with assistance from the World Bank, the Department for International Development and the United States Agency for International Development is currently preparing a comprehensive post-war recovery programme focusing on two principal objectives, namely, maintaining civil order in the mining areas and establishing a sound regulatory framework for mining and marketing. Sound governance for the mining sector will be emphasized. The Government is currently developing a mining policy and strategy to manage artisanal diamond-mining activity and create an enabling environment to attract private investment for industrial-scale mining. It also needs to quickly improve its operational capacity to monitor and curb illicit mining, as well as pursue the reactivation of leases for industrial diamond mining.

VI. Observations

38. The successful holding of the elections on 14 May marked an important milestone in the Sierra Leone peace process. Coming only four months after the completion of the disarmament process, the elections represent a remarkable step towards lasting peace in Sierra Leone. I wish to congratulate the people of Sierra Leone for turning out to vote in impressive numbers, and in a peaceful and orderly manner. The efforts of the National Electoral Commission, which organized and conducted the elections, as well as UNAMSIL and other international partners, which provided vital security, logistical, technical and financial support, should also be applauded. I also commend the political parties, whose exemplary acceptance of the outcome contributed to the success of the elections.

39. The current calm must endure in order to permit all parties concerned to concentrate on the immediate challenges ahead. In my last report (S/2002/267), I stressed that the elections would not by themselves provide a lasting solution to the crisis in Sierra Leone and that, without well-established Government structures throughout the country and a security apparatus capable of protecting the country from both internal and external threats, the stability achieved in Sierra Leone would remain tenuous. The Security Council, in its resolution 1400 (2002), also emphasized the importance of the continuing support of UNAMSIL to the Government of Sierra Leone in the consolidation of peace and stability after the elections. The prospects for strengthening the fragile peace in Sierra Leone are promising, provided the Government, UNAMSIL and other international partners act quickly and effectively to tackle the priorities set out in the present report.

40. I am, however, concerned about two factors that at this stage pose the greatest threat to stability in Sierra Leone. First is the escalating conflict in Liberia. The increasing incursions by armed elements into Sierra Leone portend a worrying trend. There is a real risk that Liberia and Sierra Leone could be trapped in a vicious cycle, with civil war continuously swinging back and forth between the two countries. It is therefore important for the international community to act quickly to address the conflict in Liberia. In this regard, the ongoing efforts of the ECOWAS leaders and His Majesty King Mohammed VI of Morocco, aimed at promoting a ceasefire and reconciliation among the Liberian parties, as well as building confidence among the leaders of Guinea, Liberia and Sierra Leone, deserve the support and encouragement of the international community. I therefore urge the Security Council to take concrete measures in support of these efforts, which I expect to be reinforced by the United Nations Office for West Africa when it becomes operational.

41. The second is the challenge facing the Sierra Leone army and police in their efforts to develop their capabilities to effectively assume responsibility for the country's security after the eventual departure of UNAMSIL. A clear definition of Sierra Leone's national security plan, including an indication of what needs to be done for the army and the police to be able to sustain the stability created by the presence of

UNAMSIL, is crucial to the planning for the drawdown of the Mission. The efforts of the Government of the United Kingdom and the International Military Advisory and Training Team have gone a long way towards preparing the Sierra Leone Army to assume its national security responsibilities, as have the efforts of the Commonwealth and UNAMSIL with respect to the police. However, both institutions still face formidable shortcomings, particularly in terms of infrastructure, logistics and the Government's capacity to sustain them. With regard to the police, I recommend that the 30 additional United Nations civilian police personnel that were deployed recently to support the elections be retained in UNAMSIL. Their continued presence would strengthen the Mission's capacity to support the training of the Sierra Leone police. As a matter of urgency, a way must be found to significantly expand and improve the capability of the force to a level at which it can maintain law and order without the presence of UNAMSIL. The newly elected Government cannot achieve this in a realistic time frame on its own. It is therefore necessary to put into place special measures to accelerate the process.

42. In the ongoing planning for the drawdown of UNAMSIL, the Government's capacity to maintain external and internal security without international assistance will be the principal benchmark. In the assessment of UNAMSIL, a gradual drawdown of the Mission should be commensurate with the prevailing security conditions and the Government's capacity to match them. These conditions will depend on many factors, including the potentially destabilizing effects of the situation in Liberia, the steps to be taken by the Government to effectively extend its authority throughout the country and to re-establish effective control over diamond mining, and the reintegration of ex-combatants.

43. As part of the process of consolidating the peace, and in preparation for a reduced international presence in the country, it is particularly important for the newly elected Government to begin to assume the leading role in addressing the challenges ahead. The international partners should, however, continue to provide the necessary support. In this regard, I wish to emphasize the need to urgently provide the resources required to finalize the uncompleted aspects of the peace process, especially reintegrating ex-combatants, effectively extending State authority throughout the country, and promoting justice, the rule of law and national reconciliation. The building of the capacities of the police and the army will also continue to demand a substantial quantity of resources from the international community. At the same time, the Government will need to act quickly to enhance its capacity to generate revenue and contribute resources for these priorities.

44. Despite the magnitude of the challenges ahead, there is no doubt that there exists a potential for success in Sierra Leone. In order to realize this potential, the international community must stay the course and protect the major investments that have made possible the progress achieved so far. For its part, the Government of Sierra Leone must deliver the peace dividend to the people and address not only the consequences of the war, but also its root causes, including corruption, human rights abuses, highly centralized Government structures and neglect of the developmental needs of the population in the provinces.

45. In conclusion, I wish to express my appreciation to the Security Council and troop-contributing countries, as well as ECOWAS, for their support for UNAMSIL, which made the election milestone possible. I also wish to congratulate my Special Representative and all UNAMSIL military and civilian personnel, as well as the Government of Sierra Leone, for this remarkable achievement. I particularly commend the various military contingents of UNAMSIL, which, using their own resources, have achieved so much in improving the lot of the people of Sierra Leone through community projects and the provision of medical facilities where none would otherwise exist.